

MENTAL HEALTH COMMISSION: The new Department of Mental  
DEPARTMENT OF MENTAL HEALTH: Health, to be established pur-  
suant to Section 37(a), Arti-  
cle IV, Missouri Constitution and Senate Bill No. 1, 77th Gen-  
eral Assembly, First Extra Session, will be under the control  
of the director of such department. The provision of Senate  
Bill No. 1, which purports to vest the control of such depart-  
ment in a State Mental Health Commission, is invalid.

OPINION NO. 161

April 4, 1974

Harold P. Robb, M.D., Director  
Division of Mental Health  
Post Office Box 687  
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Dear Dr. Robb:

This opinion is in response to your request asking whether the Department of Mental Health, which will be established pursuant to Section 37(a), Article IV, Missouri Constitution and Senate Bill No. 1, 77th General Assembly, First Extra Session, is to be under the control of the director of said department or under the control of the "State Mental Health Commission."

Section 37(a) provides:

"The department of mental health shall be in charge of a director who shall be appointed by the commission, as provided by law, and by and with the advice and consent of the senate. The department shall provide treatment, care, education and training for persons suffering from mental illness or retardation, shall have administrative control of the state hospitals and other institutions and centers established for these purposes and shall administer such other programs as provided by law." (Emphasis added)

Senate Bill No. 1 (CCSHCSSCSSB No. 1) provides in pertinent part:

"Section 9. 1. There is hereby created a department of mental health to be headed by a mental health commission who shall appoint a director, by and with the advice and consent of the senate. . . ." (Emphasis added).

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It appears clear that there is a literal conflict between the first sentence of Section 9.1 of the bill and the first sentence of Section 37(a) in that the constitutional provision provides that the department "shall be in charge of a director" [sic] and the reorganization bill provides that the department "be headed by a mental health commission."

The terminology used in Section 37(a) is not unique. Similar language was employed in Section 22, Article IV, repealed by the amendments to Article IV of the Missouri Constitution, which provided that "[t]he department of revenue shall be in charge of a director of revenue, . . . ." The Constitutional Debates respecting repealed Section 22, Article IV, indicate that the Constitutional Convention used the language "head of" as interchangeable with "in charge of" in discussing the powers of constitutional department directors. Debates, Second Typing, pages 4507-4558. By comparison, new Section 22, Article IV with respect to the Department of Revenue similarly provides that "[t]he department of revenue shall be in charge of a director of revenue. . . ."

Similarly, "[t]he department of agriculture shall be in charge of a director. . . ." Section 35, Article IV; "[t]he department of consumer affairs, regulation and licensing shall be in charge of a director . . ." Section 36(a), Article IV; there "shall be established a department of social services in charge of a director . . ." Section 37, Article IV; "[t]he department of natural resources shall be in charge of a director . . ." Section 47, Article IV; "[t]he department of public safety shall be in charge of a director . . ." Section 48, Article IV; "[t]he office of administration shall be in charge of a commissioner of administration," Section 50, Article IV.

We note that other sections in Article IV expressly provide that some commissions or boards are given control or some measure of control of a department. Cf., Section 32(a) respecting the Department of Transportation; Section 40(a) respecting the Conservation Commission; Section 49 respecting the Department of Labor and Industrial Relations.

Further it appears that the word "head" is used throughout such constitutional provisions as referring to the person, board or commission in charge of such departments. Section 12, Article IV, provides that:

". . . The general assembly may create by law one department, in addition to those named, provided that the department shall be headed

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by a director or commission appointed by the governor on the advice and consent of the senate. . . ." (Emphasis added)

and that:

". . . The director or commission shall have administrative responsibility and authority for the department created by law. . . ."  
(Emphasis added)

Section 17 refers to "heads of all the executive departments" (Emphasis added). Sections 51 and 53 speak of department and division "heads." Thus, clearly those having charge of departments are considered the heads of the departments.

In view of the explicit language of Section 37(a), Article IV, we must conclude that the director of such department will be not only in charge of the department but will also necessarily be the head of the department notwithstanding the provision of Senate Bill No. 1 to the contrary. Therefore, Senate Bill No. 1 is to that extent unconstitutional.

The invalidity of this provision does not affect the remainder of Senate Bill No. 1 because such provision is severable. Section 1.140, RSMo.

#### CONCLUSION

It is the opinion of this office that the new Department of Mental Health, to be established pursuant to Section 37(a), Article IV, Missouri Constitution and Senate Bill No. 1, 77th General Assembly, First Extra Session, will be under the control of the director of such department. The provision of Senate Bill No. 1, which purports to vest the control of such department in a State Mental Health Commission, is invalid.

The foregoing opinion, which I hereby approve, was prepared by my assistant, John C. Klaffenbach.

Yours very truly,



JOHN C. DANFORTH  
Attorney General